

Decision **DRAFT DECISION OF ALJ BUSHEY** (Mailed 7/19/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of USP&C to Determine Whether it has Violated Public Utilities Code Section 2889.9 by Failing to Provide Commission Staff with Requested Information and Whether the Commission Should Order California Telephone Companies to Cease Providing Billing and Collection Services to USP&C.

Investigation 99-10-024
(Filed October 21, 1999)

OPINION CLOSING PROCEEDING

Summary

This decision finds that no further Commission proceedings are required at this time against USP&C, Inc., (USP&C) and closes the proceeding.

Background

On April 23, 2001, the Commission issued Decision (D.) 01-04-036, which found that respondent, USP&C, Inc. (USP&C), served as the billing agent for \$51.5 million of billings to California customers. USP&C presented billings for service providers that conducted business under several different unregistered aliases, and that also used up to four different names for identical services. Of the total amount billed by USP&C during this period, \$27 million (52%) was refunded at the customer's request. The remaining \$24.5 million, however, was collected by USPC, and was forwarded to the service providers, net of the fees charged by USP&C.

The Commission held that USP&C's billings failed to comply with Public Utilities Code¹ §§ 2890(e)(2)(A) and (B)², and imposed a fine of \$1,750,000. The Commission also ordered USP&C to show cause why it (1) should not be required to disgorge all amounts retained from unauthorized billings, and (2) should not be fined for failing to comply with other provisions of §§ 2889.9 and 2890. The decision also ordered all California incumbent local exchange carriers to cease billing for USP&C.³

On April 17, 2003, the Commission denied USP&C's application for rehearing of D.01-04-036, and ordered USP&C to pay the fine. USP&C unsuccessfully appealed the Commission's decisions through the state court system, culminating in California Supreme Court denying USP&C's petition for review on March 30, 2004. *USP&C, Inc. v. Public Utilities Commission*, Cal. Supreme Court Case No. S122022, 2004 Cal. LEXIS 2947. On May 24, 2004, the Superior Court for the County of San Francisco granted the Commission's motion for judgment on the pleadings and entered judgment for \$1.75 million, plus interest, against USP&C.

¹ All citations are to the Public Utilities Code unless otherwise indicated.

² The version of § 2890(e)(2)(A) in effect at the time of USP&C's violations required that the billing agent provide a clear and concise description of the service for which the charge was imposed. Section 2890(e)(2)(B) required the name, address, and phone number of the party responsible for generating the charge be included on the bill. Both provisions have since been reorganized into § 2890(d)(2)(A).

³ On February 10, 2004, the United States Attorney for the Eastern District of New York unsealed an indictment against members of the Gambino crime family and USP&C for their participation in a nationwide scheme that, much like USP&C's action in California, placed unauthorized charges on the local telephone bills of millions of consumers. The charges included racketeering, racketeering conspiracy, conspiracy to commit wire and

Footnote continued on next page

Discussion

Since the Commission issued its decision in April 2001, USP&C has been unable to place its billings on telephone bills issued by California incumbent local exchange carriers. As we discuss in detail in D.01-04-036, access to such bills was the cornerstone of USP&C's operation. Accordingly, California consumers have been fully protected from further wrongdoing by USP&C. In addition, the Commission is actively pursuing collection of its judgment against USP&C, and USP&C faces substantial federal criminal charges.

In light of the unique facts of this proceeding, including the passage of time and the need for efficient use of the Commission's resources, no further Commission proceedings against USP&C are required at this time. We will, therefore, close this proceeding. We will, however, continue to pursue collection of the existing fine.

Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner for this proceeding, and Maribeth A. Bushey is the assigned Administrative Law Judge.

mail fraud, wire fraud and money laundering, and sought the forfeiture of \$430 million in criminal proceeds. <http://www.usdoj.gov/usao/nye/pr/2004feb10.htm>.

Findings of Fact

1. Since April 2001, USP&C has been unable to place billings on California telephone incumbent local exchange carriers' bills.
2. The Commission has obtained a state court judgment against USP&C and is pursuing collection efforts.
3. The California Supreme Court denied USP&C's petition for review.

Conclusions of Law

1. No further Commission proceedings against USP&C are required at this time.
2. This proceeding should be closed, effective immediately.

O R D E R

IT IS ORDERED that this proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.